

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-7545

RICHARD EDWARD BRILLHART; GARY L. SMITH,

Plaintiffs - Appellants,

v.

PATRICIA R. STANSBERRY; K. M. WHITE; UNKNOWN STAFF MEMBERS,
at FCI Petersburg Medium; FEDERAL BUREAU OF PRISONS,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern
District of Virginia, at Alexandria. Claude M. Hilton, Senior
District Judge. (1:08-cv-00686-CMH-JFA)

No. 08-7851

RICHARD EDWARD BRILLHART,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee,

and

K. DONALDSON,

Defendant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever III, District Judge. (5:07-ct-03142-D)

Submitted: February 4, 2011

Decided: March 15, 2011

Before WILKINSON, NIEMEYER, and GREGORY, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Richard Edward Brillhart, Gary L. Smith, Appellants Pro Se. Christina Ann Kelley, BUREAU OF PRISONS, Butner, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In Appeal No. 08-7851, Richard Edward Brillhart appeals a district court order and judgment granting summary judgment to the United States and dismissing his complaint. We have consolidated that appeal with Appeal No. 08-7545, in which Brillhart and Gary L. Smith appeal a district court order dismissing their complaint under 28 U.S.C. § 1915A(b)(1) (2006) for failing to state a claim. We have reviewed the records and the district court's orders and affirm for the reasons stated by the district court. See Brillhart v. United States, No. 5:07-ct-03142-D (E.D.N.C. Aug. 21, 2008); Brillhart v. Stansberry, No. 1:08-cv-00686-CMH-JFA (E.D. Va. July 21, 2008). We grant Brillhart's motion, filed in each appeal, to "Run the PLRA Payment Concurrent."* Under Torres v. O'Quinn, 612 F.3d 237 (4th Cir. 2010), 28 U.S.C. § 1915(b)(2) (2006) authorizes that no more than 20% can be taken from an inmate's monthly income to pay the filing fees regardless of how many appeals are pending.

Accordingly, we affirm the appeals and grant Brillhart's motion. The Warden of the Federal Correctional Institution in Petersburg, Virginia, shall collect and remit to the clerk of the United States District Court for the Eastern

* Gary L. Smith did not join in this motion.

District of Virginia, and the clerk shall accept, no more than twenty percent of an inmate's preceding monthly income or trust account balance, as the case may be, as payment toward his filing fees obligation. We deny without prejudice Smith's motion filed in Appeal No. 08-7545 seeking an order directing filing fees be withdrawn consecutively and that he receive a refund. Smith, currently incarcerated at the USP in Marion, Illinois, should seek relief in the court in the district in which he is confined. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED